IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1674 OF 2004

Jairaj Vallabhdas Java .. Appellant

V/s

State of Maharashtra & Anr. .. Respondents

Mr.Subhash Jha i/b Law Global for the appellant.

Mr.H.V. Mehta for respondent No.1.

Dr.F.R. Shaikh, A.P.P. for respondent No.2.

CORAM : H.L. GOKHALE &
SMT.V.K. TAHILRAMANI, JJ.

DATE : 23RD AUGUST 2004

P.C. :

1. Heard Mr.Jha for the petitioner. Mr.Mehta appears for respondent No.1 and Dr.Shaikh, A.P.P. appears for respondent no.2.

2. Mr.Jha submits that in the present case interim stay has been running in favour of the petitioner right from 13th August 2001 and that has come to be vacated in a situation where the petitioner could not remain present for want of adequate notice. He prays that interim stay be restored till the disposal of the appeal which is pending before the Appellate Tribunal for Foreign

Exchange.

3. Mr.Mehta for respondent No.1 points out that under section 52(2) of the Foreign Exchange Regulation Act, 1973, the appellant is required to deposit the entire sum imposed by way of penalty and then the appeal will be heard, though the second proviso to section 52(2) provides that the Appellate Board may, if it is of the opinion that the deposit will cause undue hardship to the appellant, in its own discretion dispense with such a deposit either unconditionally or subject to such conditions as it may deem fit. Mr.Mehta submits that since this court is now approached, minimum deposit of 25% of the penalty amount should be insisted. Mr.Jha on instructions from the petitioner, who is present in court, makes a statement that the petitioner is ready to deposit 25% of the penalty amount, which comes to Rs.15,00,000/-, within 8 weeks from today. Mr.Mehta is agreeable to this time being granted provided of course the hearing of the appeal will also be adjourned beyond that.

4. We quite see the submissions made by both the counsel. Accordingly, the petitioner is permitted to deposit this amount within 8 weeks,

i.e. on or before 18th October 2004. On the assurance of the petitioner, who is present in court, that the amount will be so deposited, there will be a stay of proceedings of adjudication. The appeal proceedings will stand adjourned beyond 18th October 2004. In the event the petitioner fails to deposit this amount within 8 weeks, the stay will stand vacated, the appeal will stand dismissed and the respondents will proceed to take further action. Petition disposed of.

(H.L. GOKHALE, J.)

(SMT.V.K. TAHILRAMANI,J.)